

SUBMERGED LOGS TITLE ACTION.

The State of Montana owns the bed of Flathead Lake outside of the Confederated Salish and Kootenai tribal lands. Recently, North Shore Development, LLC, began salvage of sunken logs resting upon the bed of Somers Bay in Flathead Lake, Montana. Once DNRC learned of this attempted salvage operation, it requested that North Shore Development, LLC cease operations until it had obtained authorization from the Department to do so.

North Shore claims title to these logs by virtue of a series of assignments from the Somers Lumber Company and Great Northern Lumber Company. It is believed that these logs have rested upon the bed of Flathead Lake for between forty and a hundred years.

The Department's review of these circumstances has generated the following legal questions for resolution:

- 1) Who owns un-branded or "wild" logs resting upon the bed of navigable waters?
- 2) Who owns branded logs resting upon the beds of navigable waters?
- 3) Are logs which have rested upon the bed of Flathead Lake for more than 40 years presumptively abandoned?
- 4) Does North Shore Development, LLC have a clear chain-of-title to the subject logs?

DNRC believes that the State of Montana owns wild logs resting upon its navigable waters, by virtue of the fact that the State owns the bed of the northern half of Flathead Lake, and the natural objects lying on that bed. The Washington Supreme Court held in In the Matter of the Personal Restraint of Tortorelli, 66 P.3d 606 (Wash., 2003), that as a matter of law, the State of Washington owned un-branded submerged logs in and upon the beds of navigable waters in Washington. The Washington Supreme Court based the State's ownership of the submerged logs upon the State's ownership of the beds of navigable waters.

North Shore Development may have a claim to the branded logs, provided that they have not been legally abandoned. DNRC hasn't found any case law specifically addressing the abandonment of logs. Generally, personal property is considered abandoned after a five year lapse of time. Section 70-9-803(1)(q), MCA. By contrast, water rights are considered to be presumptively abandoned after 40 years of non-use. 76 Ranch v. Pitsch, 204 Mont. 426, 666 P.2d 215 (1983). These logs have rested on the lakebed for more than 40 years. If they have been legally abandoned, they belong to the State of Montana, because the State is the owner of property for which there is no other owner. Section 70-1-202(4), MCA.

In order to determine the ownership of submerged logs upon the State-owned portion of Flathead Lake, the Director recommends that the Board authorize the filing of a civil action for declaratory judgment and quiet title. A copy of the proposed complaint to be filed is enclosed.

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

* * * * *

MONTANA DEPARTMENT OF NATURAL)	CAUSE NO.
RESOURCES AND CONSERVATION, and)	
THE STATE BOARD OF LAND)	COMPLAINT FOR
COMMISSIONERS,)	DECLARATORY
)	JUDGMENT AND
Plaintiffs)	QUIET TITLE TO
-vs-)	PERSONAL
)	PROPERTY
NORTH SHORE DEVELOPMENT, LLC, and all)	
other persons, unknown, claiming or who might)	
claim, any right, title, estate, or interest in or lien)	
or encumbrance upon the submerged logs in and)	
upon the state-owned bed of Flathead Lake, within)	
Flathead County, Montana, as described in the)	
complaint adverse to plaintiff's ownership or)	
any cloud upon plaintiff's title thereto, whether)	
such claim or possible claim be present or)	
contingent,)	
)	
Defendants.)	
)	

The Plaintiffs, the Montana Department of Natural Resources and Conservation and the Montana Board of Land Commissioners, for their cause of action against the above-named Defendants, asserts and alleges the following:

1. The Plaintiff, the State Board of Land Commissioners is a board established pursuant to Article X, Section 4 of the 1972 Montana

Constitution, which has the duty and authority under Section 77-1-202, MCA, to manage and control those state lands described within Section 77-1-101(6), MCA.

2. Pursuant to Section 77-1-301, MCA, the Plaintiff, Montana Department of Natural Resources and Conservation, is an executive agency of the State of Montana under the direction of the Plaintiff, Montana Board of Land Commissioners;
3. Pursuant to the “equal-footing” doctrine the State of Montana was vested by Congress with the title to the beds of all navigable rivers and lakes as of the date of Statehood, November 8, 1889;
4. Flathead Lake, within the boundaries of Flathead County, Montana, and outside the boundaries of Confederated Salish and Kootenai tribal lands, was navigable as of Statehood and continues to be navigable. The above-described portion of Flathead Lake comprises lands under the ownership, management, and control of the State of Montana, and the State Board of Land Commissioners;
5. The earliest recorded commercial navigation occurred upon Flathead Lake as early as 1884 when a 20-ton sailboat, "the Swan", sailed from Polson to Dooley's Landing (located within Section 9, Township 27 North, Range 20 West, MPM). This sailboat was later re-fitted with a steam engine and re-christened "the Grant".
6. A letter from the General Manager of the Somers Lumber Company to the U.S. Army Corps of Engineers, Seattle District, dated July 22, 1915 stated

that of the 75 million board feet of timber Somers Lumber Company utilized each year, 53 million board feet were annually floated down the Flathead River into Flathead Lake. Logs were collected in booms at the northern end of Flathead Lake and towed to the mill at Somers by one of the Company's three tugs.

7. In 1916, the Somers Lumber Company conducted a log drive of 30 million board feet of lumber from three miles above Nyack on the Middle Fork of the Flathead River to the Somers Lumber Company mill on Flathead Lake.
8. From 1914 to 1920, the Somers Lumber Company conducted log drives from the North Fork of the Flathead River to its mill on Flathead Lake.
9. In 1923-1924 the Somers Lumber Company conducted log drives from the boundary of Glacier National Park to its mill on Flathead Lake.
10. In 1931, the Somers Lumber Company conducted a log drive from Canyon Creek to Flathead Lake.
11. An estimated 100 commercial vessels operated on Flathead Lake between 1883 and the early 1950's, carrying travelers and goods between the Upper and Lower Flathead Valley.
12. Commercial traffic on Flathead Lake from 1930 to 1949 was almost entirely composed of logs and averaged about 58,500 tons per year.
13. U.S. v. Appalachian Power Co., 311 U.S. 377, 406-409 and The Daniel Ball, 77 U.S. (10 Wall.) 557 (1870) both hold that the Federal test for navigability is whether the waterway is susceptible of use in commerce. Because Flathead Lake, within Flathead County Montana, was used or

was susceptible of being used in its natural condition in commerce, it is considered navigable under Federal law. Consequently, the title to the bed of Flathead Lake, outside of Confederated Salish and Kootenai Tribal lands, passed to the State upon Statehood.

14. Pursuant to Sections 77-1-101, and 70-1-202, MCA, the State of Montana holds title to the beds of its navigable lakes and streams in trust for the citizens of the State;
15. The Federal Submerged Lands Act of 1953, 43 USC Section 1311(a), vested ownership of submerged logs in the States, since it provides that: ". . . title to and ownership of the lands beneath the navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, . . . [is] vested in and assigned to the respective States . . . in which the land is located . . .".
16. Similarly, Section 70-1-201, MCA, directs that: "[t]he original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States is in the people of the state[].
17. The Montana Legislature clearly accepted the "equal-footing" doctrine in 1894 when it enacted Section 70-1-202, MCA, which states that: "[t]he state is the owner of: (1) all land below the water of a navigable lake or stream; (2) all property lawfully appropriated by it to its own use; (3) all property dedicated or granted to the state; and (4) all property of which there is no other owner

18. The State of Montana is the sole and exclusive owner of the bed of Flathead Lake, outside of Confederated Salish and Kootenai tribal lands. The United States of America holds title to the above-described trial lands in trust for the Confederated Salish and Kootenai Tribes, pursuant to Confederated Salish and Kootenai Tribes v. Namen, 380 F.Supp. 452 (D.C. Mont., 1974), affirmed, 534 F.2d 1376 (9th Cir., 1976).
19. That the State of Montana's title to the above-described Flathead Lake bed, from low-water mark to low-water mark, within Flathead County is superior to that of the above-described Defendants and all other persons or legal entities.

COUNT I - QUIET TITLE TO SUBMERGED LOGS

20. The Plaintiffs incorporate paragraphs one through 19 of this Complaint, above, as if fully set out herein, and further allege;
21. Section 70-2-201, MCA, provides that: "Any person claiming title to personal property, whether in actual possession thereof or not, may bring an action in the district court of any county wherein such personal property or any part thereof is situated against any person or persons claiming any interest therein by reason of alleged ownership, lien, or otherwise and by a decree of such court may have established and determined finally the rights of all claimants to such personal property".
22. This Court has jurisdiction to adjudicate the ownership to the above-described submerged logs resting in and upon the bed of Flathead Lake in Flathead County, Montana.

23. The State of Montana is the sole and exclusive owner of all submerged logs and timber resting in and upon the sediments and bed of Flathead Lake within Flathead County, Montana, from low-water mark to low-water mark, and outside the boundaries of the above-described Confederated Salish and Kootenai tribal lands, by virtue of its ownership of the bed of that portion of Flathead Lake.
24. The State's title to wild or un-branded submerged logs is confirmed by the provisions of the Federal Submerged Lands Act of 1953, 43 USC Section 1311(a).

COUNT II - DECLARATORY JUDGMENT OF ABANDONMENT

25. The records of the Montana Secretary of State's records show that the Somers Lumber Company was first qualified to do business as a corporation in Montana on November 15, 1900. Its last annual report was filed with the Secretary of State's Office on February 21, 1946.
26. Upon information and belief, the Plaintiffs assert that the Somers Lumber Company actively operated in Somers Bay, Flathead Lake, Montana, from approximately 1900 to 1949. The Somers Lumber Company no longer exists and its articles of incorporation have expired. The Montana Secretary of State's records disclose that although other companies have subsequently utilized the "Somers Lumber Company" name they, too, no longer exist.
27. Via a series of quit claims and assignments, North Shore Development purports to claim submerged branded logs previously produced by a

number of defunct and expired business corporations, including: O'Brien Lumber Company; Ballard Lumber Company; Somers Lumber Company; DeVoe Lumber Company; Glacier Park Company; and Great Northern Railway Company.

28. Upon information and belief, the Plaintiffs assert that submerged branded logs may have been deposited upon the bed of Flathead Lake during a period of time from 1900 through the 1960's. Wild or un-branded logs have continuously been deposited upon the bed of Flathead Lake through natural processes.

29. The Plaintiffs assert that branded logs, which have been continuously submerged and resting in or upon the sediments of navigable waters, owned by the State of Montana, for a period of five years, have been legally abandoned pursuant to Section 70-9-803(1)(q), MCA, and are therefore owned by the State of Montana pursuant to Section 70-1-202(4), MCA, because the State of Montana is the owner of personal property for which there is no other owner.

30. NOW, THEREFORE , the Plaintiffs, the Montana Board of Land Commissioners and the Montana Department of Natural Resources and Conservation request judgment as follows:

1. That the Court quiet title to the State of Montana, and confirm its exclusive ownership of, all submerged logs resting in or upon the bed of Flathead Lake in Flathead County, Montana.

2. That the Court declare the claims of North Shore Development, LLC, and all other persons, known or unknown, to be void and without any right, title or interest in or to the above-described submerged logs.

3. For the Court's declaration that branded logs resting in or upon the beds of State-owned navigable waters for a period of greater than five years are legally abandoned pursuant to Section 70-9-803(1)(q), MCA.

3. That the Court grant the Plaintiffs' temporary and permanent injunctive relief preventing any person from removing such submerged logs without the prior written approval of the State Board of Land Commissioners or the Montana Department of Natural Resources and Conservation.

DATED this ____ day of May, 2006

By: _____

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Special Assistant Attorney General
Attorney for the Montana Department of
Natural Resources and Conservation, and
The Montana Board of Land Commissioners